IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

TRICITY BEHAVIORAL SERVICES, INC., an Arizona nonprofit corporation,	)	1 CA-CV 02-0742
	)	Department E
Plaintiff-Appellant,	)	Maricopa County Superior Court
v.	)	No. CV 01-013304
ARIZONA DEPARTMENT OF HEALTH SERVICES ARIZONA; ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION; and ANTHONY D. RODGERS in his official capacity as the Director of the Arizona Health Care Cost Containment System,	)	ORDER
Defendant-Appellees.	)	

The above-entitled matter was duly submitted to the Court, and the Court has this day rendered its Memorandum Decision.

IT IS ORDERED that the Memorandum Decision be filed by the Clerk.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the Memorandum Decision be sent to each party appearing herein or the attorney for such party and to The Honorable Robert D. Myers, Judge.

DATED this 25th day of November, 2003.

s/SUSAN A. EHRLICH
Susan A. Ehrlich, Judge

A true copy of the foregoing
order was mailed
November 25, 2003 to:

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1 CA-CV 02-0742

November 25, 2003
MARICOPA COUNTY
SUPERIOR COURT
CV01-013304

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Hon. Robert D. Myers, Judge
MARICOPA COUNTY SUPERIOR COURT
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Philip G. Urray, Clerk
By_____
Deputy Clerk

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

TRICITY BEHAVIORAL HEALTH SERVICES, INC., an Arizona nonprofit corporation,	) 1 CA-CV 02-0742)) Department E)
Plaintiff-Appellant,	) MEMORANDUM) DECISION
v.	) (Not for Publication) Rule 28, Arizona
ARIZONA DEPARTMENT OF HEALTH SERVICES ARIZONA; HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION; and ANTHONY D. RODGERS in his official Capacity as the Director of the Arizona Health Care Cost Containment System,	) Rules of Civil) Appellate Procedure))))))))
Defendants-Appellees.	)

Appeal from the Superior Court in Maricopa County
Cause No. CV 01-013304

The Honorable Robert D. Myers, Judge

AFFIRMED

Stoops, Denious, Wilson & Murray, P.L.C. Phoenix
By Frank L. Murray
Attorneys for Plaintiff-Appellant

Terry Goddard, Attorney General Phoenix
By Robert J. Sorce, Assistant Attorney General
Attorneys for Defendant-Appellee Arizona Department of Health Services

Johnston Law Offices Phoenix
By Logan T. Johnston, III
Attorneys for Defendants-Appellees Arizona Health Care Cost Containment System Administration and Rodgers

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EHRLICH, Judge

¶1 TriCity Behavioral Health Services ("TriCity") appeals from a superior court order affirming the decision of the Director of the Arizona Health Care Cost Containment System ("AHCCCS") denying its co-insurance and bad-debt claims against AHCCCS and the Arizona Department of Health Services ("ADHS"). The Director concluded that a prior superior court order established that ADHS, and not AHCCCS, was the party responsible for the unpaid claims and that the decision was res judicata as to TriCity's claims against AHCCCS. The Director found that TriCity had untimely submitted its claims and had failed to prove that ADHS was equitably estopped from denying the claims. For reasons discussed below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 TriCity provided out-patient mental-health services at two facilities. Most of its patients were Medicare, AHCCCS and Qualified Medicare Beneficiary eligibles or patients ("QMB dual eligibles"). The disputed claims total $1,055,374 for "partial hospitalization services" and certain co-payment insurance deductibles that triCity provided to QMB dual eligibles, which services are covered by Medicare.[1]

¶3 Under the Medicare regulatory framework, recipients of Medicare services assume responsibility for co-payments and insurance deductibles ("CID"). Medicare regulations allow a healthcare provider to "write off" CIDs if the provider is unable to collect the amount from indigent eligible members. A Medicare remittance Advice ("RA") indicates the amount of the CID for the health-care services provided, but it may take thirty days to eighteen

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1 AHCCCS covers similar health services identified as "basic partial care" and "intensive partial care," classifying those services as "bundled". AHCCCS's basic and intensive partial care programs are more liberal in their application than are Medicare's' partial hospitalization services because the former cover the treatment of persons with a dual diagnosis, i.e., mental health and alcohol/drug problems whereas the partial hospitalization services covered by Medicare do not include patients who have been diagnosed with a drug/alcohol-related problem.

months for a health-care provider to receive an RA. Once the health-care provider receives an RA, it may attempt to collect the CID from the patient or from a responsible third party. If, after reasonable diligence, the health-care provider is unable to collect the CID from either the patient or a third party, Medicare will reimburse the provider and those CIDs will be deemed bad debts.

¶4 Aetna was Arizona's fiscal intermediary for Medicare, and it routinely paid the CID claims for QMB dual eligibles. When Blue Cross/Blue Shield of Arizona ("Blue Cross") replaced Aetna, it continued to assume responsibility for the bad-debt claims of those individuals ineligible for AHCCCS coverage and non-QMB-eligible AHCCCS-covered patients. However, inlate 1996/early 1997, Blue Cross began denying TriCity's bad-debt claims for indigent QMB dual eligibles" CIDs. Blue Cross contended that AHCCCS or its program contractor was responsible for mental-health services in TriCity's area, making ComCare[2] responsible for the payment of QMB dual eligibles' CIDs.

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2 AHCCCS had contracted with ADHS to provide access to behavioral-health services covered by AHCCCS. ADHS, in turn, retained ComCare as its Regional Behavioral Health Authority to coordinate the AHCCCS-covered behavioral Health services in Maricopa County through February 8, 1999. Comcare then contracted with TriCity to actually provide the mental-health services.

¶5 In an attempt to collect the CIDs from a third party, TriCity requested that ComCare process or deny the CID claims for QMB dual eligibles unable to pay. On April 8, 1997, ComCare issued a blanket denial letter for all claims. TriCity then attempted to have ComCapre process the claims individually, but ComCare refused. TriCity subsequently sought reimbursement from Blue Cross for these unpaid CID claims as bad debts. However, Blue Cross refused to accept ComCare's blanket denial as evidence of a claim denial and asserted that an unprocessed claim was not the same as a denied claim.

¶6 In June 1998, TriCity filed a complaint in federal court, naming AHCCCS, ADHS, ComCare and Blue Cross as parties responsible for the payment of the bad-debt claims. AHCCCS, ADHS and ComCare filed a joint motion to dismiss; they asserted that TriCity had failed to exhaust its administrative remedies pursuant to ADHS's Provider Appeal Policy 2.15. The court agreed and dismissed TriCity's complaint.

¶7 TriCity attempted to obtain ComCare's provider number in the EDS system (a Medicare computerized payment system) to enable it to submit the CID claim for payment. However, ComCare refused to disclose an EDS provider number because the partial hospitalization services covered by Medicare were not equivalent to AHCCCS's basic and intensive partial care services and were not AHCCCS-covered services.

¶8 After TriCity's federal complaint was dismissed, it filed a grievance with ComCare. ComCare delayed issuing a decision, and TriCity appealed to AHCCCS. On June 25, 1999, the AHCCCS Director issued a Decision, finding that the responsibility for the unpaid CIDs had been explained in the provision for mental-health services within AHCCCS's contract with ADHS and its subcontractors. The Director concluded that ComCare was responsible for a $4000,000 portion of the claims and that the remaining claims were untimely because they concerned dates of service prior to August 5, 1997.

¶9 ComCare and TriCity appealed the Director's decision to Maricopa County Superior Court. AHCCCS participated as a nominal party. ADHS was not a party.

¶10 The superior court decided that ComCare was not responsible for paying the claims because the Arizona plan provided that AHCCCS would pay the full CIDs for Medicare-covered services for QMB dual eligibles. The court also ruled that the contract between AHCCCS and ADHS had shifted responsibility to its subcontractor, ComCare. On March 21, 2000, the court found ADHS to be the responsible party and reversed the Director's decision.

¶11 TriCity sent a grievance letter to AHCCCS with a copy to ADHS. Two weeks later, it sent a separate grievance letter to ADHS requesting reimbursement for the bad debts attributable to the

unpaid Medicare CIDs for fiscal years 1996 through 1999. ADHS denied TriCity's claims as untimely, and TriCity appealed that decision.

¶12 The matter proceeded to a hearing before an administrative law judge ("ALJ"). The ALJ issued a Recommeded Decision affirming the denial of TriCity's grievance against ADHS as untimely. The ALJ also concluded that TriCity was collaterally estopped by the superior court's ruling from seeking reimbursement from AHCCCS and rejected TriCity's equitable-estoppel argument. The AHCCCS Director affirmed the Recommended Decision, and adopted the ALJ's findings and conclusions.

¶13 TriCity appealed this decision to the superior court, which affirmed the Diector's decision. TriCity then appealed to this court, presenting the following issues:

1. Whether the Director correctly decided that the first superior court decision precluded TriCity from asserting liability against AHCCCS for the CIDs.

2. Whether the Director correctly decided to deny TriCity's claim against ADHS as untimely; and

3. Whether the Director correctly decided that TriCity had failed to establish the elements of its equitable

estoppel theory.

DISCUSSION

A. Standard of Review

¶14 Our review is limited to determining whether the administrative action was illegal, arbitrary, capricious or involved an abuse of discretion. *City of Sierra Vista v. Dir., Ariz. Dep't of Envtl. Quality*, 195 Ariz. 377, 380 ¶7, 988 P. 2d 162, 165 (App. 1999). We will not rewigh the evidence but examine the agency's factual findings to ensure that they are supported by substantial evidence. *Sigmen v. Ariz. Dep't of Real Estate*, 169 Ariz. 383, 386, 819 P. 2d 969, 972 (App. 1991). However, no deference is given to the agency's conclusion of law, and we may substitute out own conclusions. *Id.*

B. Res Judicata or Collateral Estoppel

¶15 In the administrative proceeding, triCity sought to hold ADHS and AHCCCS responsible for the unpaid CIDs. The Director held that the superior court's ruling that AHDS, not AHCCCS, was the responsible party for the CIDs precluded TriCity from relitigating AHCCCS's liability for those debts. We agree.

¶16 AHCCCS asserts that the issue of debt responsibility is harred by the doctrines of collateral estoppel and res judicata. The application of either doctirne is a question of alw that we review de novo.

Campbell v. SZL Pro.s, Ltd., 204 Ariz. 221, 223 ¶8, 62 P. 3d 966, 968 (App. 2003) Collateral estoppel); *Better Homes Constr. Co. v. Goldwater*, 203 Ariz. 295, 298 ¶10, 53 P. 3d 1139, 1142 (App. 2002) (res judicata).

> Under the doctrine of res judicata an existing final judgment, rendered upon the merits without fraud o[r] collusion by a court of competent jurisdiction, is conclusive as to every point decided and as to every point with respect to the parties thereto.

Barassi v. Matison, 134 Ariz. 338, 340, 656 P. 2d 627, 629 (App. 1982). Res judicata applies in a subsequent proceeding when the parties, subject-matter and cause of action are the same. *Id.*

¶17 The doctrine of collateral estoppel "bars a party from relitigating an issue identical to one [it] has previously litigated to a determination on the merits in another action." *Id.* It applies to the issues involved "in an earlier case even though some factual matters and legal arguments which could have been presented were not." *Id.* At 341, 656 P. 2d at 630.

¶18 TriCity contends that neither doctrine applies because (1) AHCCCS was only a nominal party in the first superior court case, (2) AHCCCS's responsibility for the CIDs was not fully and finally adjudicated in that suit and (3) the ALJ had a "different jurisdiction than [did the superior court] and may consider this issue on the new and different record before [the

ALJ]." As support, TriCity points to the court's notation in a minute entry that it could not convert the grievance against ComCare into a judgment against AHCCCS.

¶19 The part of the superior court's minute entry to which TriCity refers only recognized that the court could not convert the Director's decision against ComCare into a judgment against AHCCCS as a procedural matter.[3] However, AHCCCS participated as a party in the case and briefed the contractual issues, and the court determined that ADHS was the responsible party for the CIDs. TriCity now seeks to relitigate the responsibility for the unpaid CIDs., which was the central issue before the court, an issue fully briefed and finally adjudicated. TriCity neither appealed that ruling not attempted to amend its complaint to pursue AHCCCS for liability for the CIDs.

¶20 Even if AHCCCS's role as a nominal party did take it outside the scope of the res judicata requirement for identical parties, see El Paso Natural Gas Co. v. State, 123 Ariz. 219, 222, 599 P.2d 175, 178 (1979), AHCCCS was still a party to the proceeding and responsibility for the CIDs was briefed and adjudicated. Accordingly, irrespective of

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3 While the court could not convert the grievance against ComCare into a judgment against AHCCCS, had it found the substantive issue of liability for the CIDs unclear, it could have remanded the issue to AHCCCS for furhter proceedings. Howerver, the court concluded that ADHS was the responsible party for the CIDs.

the application of the doctrine of res judicata, TriCity is collaterally estopped from relitigating responsibility for the CIDs regardless of any new and different forum or record before the ALJ. As noted in *Barassi:*

> If a point or question was in issue and adjudicated in a former suit, a party bound by the judgment cannot escape the estoppel by producing at a second trial new arguments or additional or different evidence in support of the proposition which was decided adversely to him.

134 Ariz. At 340, 656 P. 2d at 629. Because TriCity is barred from pursing its claims against AHCCCS, we need now only address the timeliness of the claims for the equitable-estoppel argument against ADHS.

C. Untimely Claims

¶21 TriCity's contract with ComCare required TriCity's compliance with the grievance rules and proceedings established by ADHS, including ADHS Policy 2.15, Arizona Revised Statutes section ("A.R.S. §") 36-2901 et seq., and applicable provisions and rules pertaining to and promulgated by AHCCCS. TriCity was also subject to the applicable terms and conditions of ADHS's contracts with ComCare and AHCCCS.

¶22 Pursuant to its contract with AHCCCS, ADHS was required to adopt and maintain a grievance system applicable to a Regional Behavioral Health Authority ("RBHA") like ComCare and to service

providers like TriCity. It this adopted ADHS Policy 2.15, which provides that any appeal from a decision, policy or an adverse action must be in writing and filed with RBHA, i.e., ComCare, within sixty days. The provider may appeal an adverse RBHA decision to ADHS within fifteen days, request an administrative hearing for ADHS's decision and then appeal to AHCCCS.

¶23 ADHS's contract with AHCCCS mirrored A.R.S. § 36-2904 (H) (2000), [4] which precluded ADHS and its subcontractors from paying claims for covered services initially submitted more than six months after the date of service or six months after the date of eligibility, whichever was later. It also precluded the payment of clean claims[5] submitted more than twelve months after the date of service. Similarly, Arizona Administrative Code "A.A.C." R-

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4 The 2000 version of A.R.S. §§ 36-2903.01 and 36-2904 were in effect at the time fo the relevant administrative and superior court actions. Both statutes were modified in 2001. See 2001 Ariz. Sess. Laws, ch. 31 § 1 (ameding A.R.S. § 36-2904); 2001 Ariz. Sess. Laws, ch. 84 § 2 (amending A.R.S. § 36-2903.01; 2001 Ariz. Sess. Laws, ch. 96 § 1 (amending A.R.S. § 36-2903.01); 2001 Ariz. Sess. Laws, ch. 344 § 39 (amending A.R.S. § 36-2903.01). We apply the grievance provisions in effect at the time of the underlying dispute.

5 A "clean claim" is one that can be processed for payment without the need for additional supporting documentation. A.R.S. § 36-2904 (H) (1) (2000).

9-22-705 (A), adopted by AHCCCS, prohibits payments of claims received more than six months from an initial claim submission and more than twelve months for a clean claim submission.

¶24 ADHS additionally contends that TriCIty's grievance was based on AHCCCS's December 30, 1998 letter, construing it as a claim denial or adverse action. TriCity did not file its grievance with ADHS until April 13, 2000. ADHS asserts that this grievance was untimely because A.R.S. § 36-2903.01 (B) (4) (2000) requires TriCity to file its grievance within sixty days of December 30, 1998[6]

¶25 TriCity is seeking review of the superior court's March 13, 2000 ruling and asserts that its April 13, 2000 grievance letter to ADHS was timely submitted within sixty days of that decision pursuant to A.R.S. § 36-2903.01 (B) (4) (2000), which provides in pertinent part:

With the exception of grievance filed pursuant to § 36-2904, subsection H, a grievance shall be filed in writing with and received by the administration not later than sixty days after the date of the adverse action, decision or policy implementation being grieved.

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6 Similarly, ADHS Policy 2.15 also required triCity to submit in writing to any RBHA, like ComCare, any appeal from any nonpayment of a claim, denial of payment of a claim or an adverse action, decision or policy within sixty dats of the action or decision.

¶26 Assuming that TriCity's grievance was based on the superior court's order and not AHCCCS's December 20, 1998 letter, it does not meet the statutory definition of an appealable agency action. An "appealable agency action" is on "that determines the legal rights, duties or privileges of a party and that is not preceded by an opportunity for an administrative hearing." A.R.S. § 41-1092 (3) (2000).[7] Further, an "agency" is "any board, commission, department, officer or other administrative unit of this state, including the agency head," but the definition of "agency" expressly excludes a court. ARS § 41-1001 (1) (2000). Therefore, the superior court is not an "agency" and the court's order was not "an appealable agency action" subject to administrative review. ARS §§ 41-1001 (1), 41-1092 (3). As such, that order could not serve to render Trinity's April 13, 2000 submission to ADHS timely and within the sixty-dy requirement of ARS § 36-2903.01 (B) (4). Trinity has not pointed to any other applicable appealable agency action.

¶27 ADHS also asserts that ARS § 36-2904 (H) required Trinity to file clean claims within one year from the date of service. That statute provides in pertinent part:

The administration shall not pay claims for system

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7 A.R.S. §§ 41-1092, 1001 have been amended. See A.R.S. §§ 41-1092, 1001 (1999 & Supp. 2003). However, the pertinent subsections have not been altered since the relevant administrative and superior court actions.

covered services that are initially submitted more than six months after the date of the services for which payment is claimed or that are submitted as clean claims more than twelve months after the date of service of which payment is claimed . . . .

> 1. "Clean claims" means claims that may be processed without obtaining additional information from the provider of service of from a third party but does not include claims under investigation for fraud or abuse or claims under review for medical necessity.
>
> 2. "Date of service" for a hospital impatient means the date of discharge of the patient.

A..R.S § 36-2904 (H). In this case, the claims were for services provided in 1996 through early 1999, but Trinity did not send ADHS a grievance letter until April 13, 2000. Accordingly, Trinity failed to submit its claims to ADHS within twelve months of any of the respective dates of services.

¶28 Trinity asserts that ARS § 36-2904 (H) is inapplicable because the disputed claims are not for AHCCCS "covered services". Regardless of the applicability of the statutory limitation, the claims were also untimely by the terms of TriCity's contract with ComCare. Which also included a six month/twelve-month time limit for submission of

claims. As the ALJ noted,

> In its subcontract with ComCare, Trinity agreed that the terms of the subcontract are subject to the applicable material terms and conditions of the contract existing between ADHS and the RBHA, and between ADHS and AHCCCS, for provisions of AHCCCS services. The contracts between ADHS and AHCCCS, in fact, speak to the issue of payment for QMB coinsurance and deductibles as well as the limitations within which to file claims. Even if ARS § 36-2904 (H) were deemed not to apply, Trinity is still obligated to comply with the six-month, twelve-month time limitations set forth in the relevant contracts.

¶29 The ALJ concluded that Trinity also agreed to comply with all applicable rules promulgated by AHCCCS, which included A.A.C. R9-22-804 (C) (2) (eff. 1998). This rule required a provider to file "[a] written grievance regarding a claim denial . . . not more than 12 months after the date of the service for which payment is claimed." The ALJ also concluded that there was "no requirement in the rule that the service be a 'covered service,' merely that it be a service for which payment is claimed." There is no conclusion but that Trinity untimely submitted its claims.

D. Equitable Estoppel

¶30 Trinity argues that, even if it untimely submitted its claims, ADHS is equitably estopped

from rejecting the claims because it misled Trinity as to which entity was responsible for the CIDs and prevented Trinity from timely submitting the claims. The Director disagreed, stating that, even if the doctrine of equitable estoppel could be asserted against a governmental agency, Trinity had failed to prove the elements of estoppel.[8]

¶31 Equitable estoppel may be applied against the government and to its exercise of governmental functions "when justice dictates." *City of Tucson v. Whiteco Metrocom, Inc.*, 194 Ariz. 390, 396 ¶22, 983 P. 2d 759, 765 (App. 1999). Specifically, the government "may be estopped only when its 'wrongful conduct threatens to work a serious injustice and . . . the public interest would not be unduly damaged.'" Id. (Quoting *Freightways, Inc. v. Ariz. Corp. Comm'n,* 129 Ariz. 245, 248, 630 P. 2d 541, 544 (1981)).

¶32 To establish equitable estoppel, Trinity had to show that (1) ADHS committed acts inconsistent with a position it later adopted, (2) Trinity relied upon

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8 The Director added: "TriCity has not demonstrated any affirmative acts by ADHS inconsistent with a position it later adopted and therefore cannot demonstarte justifiable reliance on any sich affirmative acts or detriment suffered as a result of any such acts. Indeed, TriCity's decisions were made in reliance on the counsel of a cadre of professional experts hired by TriCity to provide advice in accounting, ;law, claims filing, claims processing and collection, and not on any wrongful or affirmative misconduct on the part of ADHS."

those acts and (3) Trinity suffered an injury as a result of ADHS's repudiation of its prior conduct. Id. (Citing *Valencia Energy Co. v. Ariz. Dep't of Rev.*, 191 Ariz. 565, 576-77 ¶35, 959 P. 2d 1256, 1267-68 (1998)). These elements are "conditioned by the general rule that estoppel may apply against the state only when the public interest will not be unduly damaged and when its applications will not substantially and adversely affect the exercise of governmental powers." *Valencia Energy Co.*, 191 Ariz. At 578 ¶40, 959 P. 2d at 1269.

¶33 The first element requires an affirmative and formal act by the government entity, normally in writing, and, in particular by an employee authorized to act in the subject of review. *Id.* at 577 ¶36, 959 P. 2d at 1268 (casual acts or advice offered by non-supervisory employees ordinarily will not suffice). While Trinity offers numerous examples of affirmative acts by ADHS claimed to have been inconsistent with a position later repudiated, i.e., that ComCare was responsible for payment of the CIDs, most of these examples involve communications or representations made by AHCCCS or ComCare personnel, not ADHS. Rather, ADHS tool affirmative acts to guide Trinity in the appropriate direction. For instance, in June 1998, ADHS filed a motion to dismiss TriCity's complaint for its failure to exhaust administrative remedies. In this motion, ADHS articulated the grievance and administrative process for Trinity to follow and attached a copy of ADHS Policy 2.15. ADHS was under no obligation to do more than notify Trinity of the grievance process.

While Trinity did submit a grievance with ComCare, it never appealed ComCare's actions as a denial of payment or as an adverse action pursuant to ADHS Policy 2.15, or sought any payment from ADHS. Instead, Trinity exclusively pursed ComCare via a different legal process' however, its decision to do so was not based upon any misrepresentation by ADHS.

¶34 Additionally, Trinity did not produce any documentation from an ADHS representative on CIDs responsibility. The alleged misrepresentation or misleading conversations center on telephone conversations with non-supervisory ADHS employees, which were undocumented and focused on various issues, not just CIDs. For example, John Phin, TriCity's Chief Executive Officer, testified that he had held a conversation with Ron Smith, the former Assistant Director for ADHS Division of Behavioral Health Services, on a variety of topics, including CIDs reimbursement, wherein Smith allegedly misled him regarding CIDs reimbursement. Smith countered that he did not make any promises to Phin regarding ADHS handling of or responsibility for such claims, and asserted that, whenever a provider approached hin about settling such claims, he routinely informed the provider of the grievance process and the correspondence deadlines. This type of casual conversation is insufficient to establish estoppel. *Id.*

¶35 Neither is there estoppel based on TriCity's reliance on the December 30, 1998 letter to Trinity from Branch McNeal, the former Assistant Director of

Managed Care at AHCCCS, of which a copy was sent to ADHS. This letter was written by an AHCCCS manager, not an ADHS manager, and it did not contain any information inconsistent with a position later repudiated. Instead, the advice in the letter was consistent with Smith's statement that he routinely advised providers to follow the established ADHS grievance procedures: first through ComCare, next through ADHS and then through AHCCCS. Further, McNeal specifically indicated that either ADHS and/or one of its subcontractors was liable for QMB dual eligibles' CIDs. Thus the letter was consistent with the position upon which Trinity now relies.

¶36 The second element of estoppel requires both actual reliance and reasonable reliance under the circumstances. *Id.* at 577 ¶37, 959 P. 2d at 1268. Reliance is unjustified when knowledge to the contrary exists. *Id.*

¶37 The December 30, 1998 letter advised Trinity that ADHS might be responsible for the CIDs and that Trinity had copies of the contracts assigned responsibility and the grievance procedures. Moreover, the administrative record demonstrates that Trinity was not an unsophisticated provider; it was familiar with interpreting such contracts, as well as Medicare/Medicaid provisions. The record supports a finding that ADHS did not commit any affirmative acts to justify the application of estoppel. *See Sigmen*, 169 Ariz. At 386, 819 P. 2d at 972.

CONCLUSION

¶38 We affirm the judgment.

s/Susan A. Ehrlich, Judge

CONCURRING:
s/Patrick Irvine, Presiding Judge

s/Andrew W. Gould, Judge Pro Tempore*

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* The Honorable Andrew W. Gould, Judge of Yuma County Superior Court, was authorized to participate as a Judge Pro Tempore of the Court of Appeals by order of the Chief Justice of the Arizona Supreme Court pursuant to Article 6, Section 31 of the Arizona Constitution and A.R.S. § 12-145 *et seq.*